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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 18, ORIGINAL

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ARIZONA

BRIEF OF THE PLAINTIFF IN SUPPORT OF APPLICATION FOR A RESTRAINING ORDER, AND IN OPPOSITION TO THE DEFENDANT'S MOTION TO DISMISS THE BILL OF COMPLAINT

JURISDICTION

This is an original action by the United States against a State, brought under Article III, Section 2, clauses 1 and 2 of the Constitution of the United States.

QUESTIONS PRESENTED

Two motions are before the Court:

(a) The plaintiff has applied for an order restraining all interference by the defendant, the State of Arizona, its officers, agents, and employees, with the construction of Parker Dam pending the final determination of this action. The following questions are presented by this application:

(1) Does the complaint state a cause of action?

(2) Is there such a prospect of irreparable injury that a temporary restraining order should issue pending final determination of the action?

(b) The defendant has moved to dismiss the bill of complaint. The following questions are presented by this motion:

(1) Does the United States have constitutional authority to construct Parker Dam in the Colorado River for improvement of navigation, protection of federal property from floods, reregulation of water discharged from Boulder Dam, and reclamation of Indian and public lands, without the consent of the State of Arizona, within which State the eastern abutment of the dam will rest?

(2) If the consent of the State were necessary, do the provisions in the Arizona Enabling Act validly give such consent?

(3) Do the Secretary of the Interior and the Federal Emergency Administrator of Public Works possess adequate statutory authority to construct Parker Dam, and, in aid of such construction by the Government, to contract with the Metropolitan Water District of Southern California for cooperation by that District in financing the project?

CONSTITUTION, TREATIES, AND STATUTES INVOLVED

Constitution of the United States, Article III, Section 2, Clauses 1, 2; Article IV, Section 3, Clause

Constitution of Arizona, Article XX.

Treaty of Guadelupe Hidalgo, Feb. 2, 1848 (9 Stat. 922).

Act of March 3, 1865 (c. 127, 13 Stat. 541, 559).

Act of March 2, 1867 (c. 175, 14 Stat. 492, 514).

Act of July 27, 1868 (c. 248, 15 Stat. 198, 232).

Act of March 3, 1899 (30 Stat. 1151).

Act of June 17, 1902 (c. 1093, 32 Stat. 388).

Act of April 21, 1904 (c. 1402, 33 Stat. 189, 224).

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Act of Dec. 5, 1924 (43 Stat. 701–2, 3).

Act of Dec. 21, 1928 (c. 42, 45 Stat. 1057).

The Colorado River Compact (November 24, 1922).

Act of June 16, 1933 (c. 90, 48 Stat. 195).

Executive Order No. 6252, dated August 16, 1933.

STATEMENT

This case brings before the Court for the third time a phase of the Colorado River controversy (*Arizona* v. *California*, 283 U. S. 423; *Arizona* v. *California*, 292 U. S. 341).

The bill of complaint was filed on January 14, 1935. Process issued on that date, returnable April 1, 1935. On January 18, 1935, the United States applied to the Court for an order to show cause why

a temporary restraining order should not issue. The order issued on January 21, 1935, returnable February 4, 1935. On February 2, 1935, the defendant filed a return to the order to show cause and a motion to dismiss the bill of complaint.

The bill of complaint, in brief, alleges that on November 7, 1934, the United States was engaged in the construction of Parker Dam, in the Colorado River on the Arizona-California boundary, for the purposes of improvement of navigation, flood control, re-regulation of water discharge from Boulder Dam, and reclamation of lands within the Colorado River Indian Reservation and public lands, pursuant to the Reclamation Act (c. 1093, 32 Stat. 388), and acts amendatory thereto, and the National Industrial Recovery Act (c. 90, 48 Stat. 195); that thereupon the defendant State of Arizona, by the proclamation of martial law and the threat of armed force, stopped construction and has continued to prevent work on the dam. It is alleged that the dam must be constructed during the limited time while the flow of the Colorado River is being impounded during the filling of Boulder Dam reservoir.

The bill prays the issuance of a permanent injunction, and other remedies.

The application for a restraining order alleges that the United States will suffer irreparable injury if construction of Parker Dam is delayed. The application is supported by affidavits of the

Commissioner of Reclamation and the Secretary of the Interior, stating the necessity for immediate resumption of construction, and the irreparable character of the injury which will be sustained if the conditions now temporarily existing by virtue of the filling of Boulder Dam reservoir, and which can never be restored, are not availed of for construction of Parker Dam.

Arizona's return to the order to show cause is accompanied by a motion to dismiss the bill of complaint, and, in support both of the return to the rule and of the motion to dismiss, by an affidavit of Governor B. B. Moeur of that State and by a brief.

There are, consequently, two matters now before the Court: The plaintiff's application for a restraining order, and the defendant's motion to dismiss the bill of complaint. The issues upon the motion to dismiss the bill of complaint are, of course, restricted to the face of the bill; the motion necessarily admits all properly pleaded allegations. The affidavit of the Governor contradicting the allegations of the bill of complaint and alleging affirmative matter, such as the contents of telegrams which he has received from a United States Senator concerning this case, is therefore not properly before the Court on any issue raised by the motion to dismiss, although the defendant's brief in support of that motion relies on the statements in the Governor's affidavit. These statements, if they constitute defenses to this action,

may be raised hereafter by way of answer in a proper pleading. The Court may pass upon the application for a restraining order and the motion to dismiss separately, and at different times. Accordingly, this brief is divided into two parts: Part I deals with the motion to dismiss, and Part II with the application for a restraining order.

SUMMARY OF ARGUMENT

Part I. The defendant's Motion to Dismiss the Bill of Complaint should be denied.

(1) The United States has constitutional power to construct Parker Dam in aid of navigation and flood control. The bill alleges, and its allegations must be taken as admitted by the motion to dismiss, that Parker Dam will reregulate and equate, in aid of navigation and flood control, the waters discharged at Boulder Dam, and will impound and control the floods of the Bill Williams River and other waters entering the Colorado River between Parker Dam and Boulder Dam which now imperil navigation and cause damage to the Colorado River Indian Reservation and other federal property. The consent of the State of Arizona is not necessary to the exercise of these Federal powers.

(2) The United States has constitutional power to construct Parker Dam for the reclamation of Indian and public lands. The bill of complaint alleges, and the allegations must be deemed admitted by the motion to dismiss, that the Colorado

River Indian Reservation contains about 150,000 acres of irrigable land, which, however, require pumping or diversion of waters of the Colorado River for the reclamation thereof, and that Parker Dam is so designed and will be so constructed as to enable the reclamation of all lands within the reservation by means of pumping with electric energy to be generated at Parker Dam, or by means of diversion of water at the dam, or both. The consent of the State of Arizona is not necessary for the exercise of the federal power to reclaim and irrigate lands within an Indian Reservation and public lands, and to erect structures necessary for the furnishing of water for such purposes.

(3) If the consent of the State of Arizona were otherwise necessary, the provisions of the Enabling Act under which the State was admitted to the Union specifically consent to the erection of works for reclamation purposes. The stipulation in the Enabling Act is a valid provision for the protection of interests of the United States in Indian and public lands.

(4) The Secretary of the Interior and the Public Works Administrator have adequate statutory authority for the construction of Parker Dam. The Secretary is authorized by the Act of April 21, 1904 (c. 1402, 33 Stat. 189, 224), to divert waters of the Colorado River and to reclaim lands within the Colorado River Indian Reservation therewith. He is authorized by the act of March 4, 1921 (c. 161,

41 Stat. 1367, 1404), to accept funds furnished by other parties and to expend them under the Reclamation Act as though specifically appropriated by Congress. The contract of February 10, 1933, between the United States and the Metropolitan Water District of Southern California is an advantageous and proper exercise of that authorization. The United States will build, own, and control Parker Dam, and the fact that the District will receive benefits by its construction and will pay for those benefits, does not diminish the Federal interest.

Independently, the Federal Emergency Administrator of Public Works is authorized by the National Industrial Recovery Act (c. 90, 48 Stat. 195, Title II) to construct or aid in the construction or financing of conservation and river improvement works, and to utilize other governmental officers and agencies in so doing, including necessarily the Secretary of the Interior. It is immaterial that the National Industrial Recovery Act was enacted after the execution of the contract of February 10, 1933, between the United States and the Metropolitan Water District; the Recovery Act was in force when the construction of Parker Dam was commenced, and the project had been duly included in the "comprehensive program of public works" prior thereto. The existence or nonexistence of the contract of February 10, 1933, did not affect the validity of the authority exercised under the Re-

covery Act, as distinguished from the independent bases of authority existing prior to passage of that act.

As to the action of the Chief of Engineers: First, the "recommendation" of a project under the Industrial Recovery Act (c. 90, 48 Stat. 195, Title II), unlike the "approval" of a project under the Act of March 3, 1899 (30 Stat. 1151), and its supplements, is recognized by Congress as an authorization independently of concurrence by the State. Second, the 1899 Statute relates solely to construction by private parties, not to projects constructed by the United States.

Part II. The plaintiff's application for a temporary restraining order should be granted:

(1) The bill states a cause of action entitling the United States to a permanent injunction. The argument upon this point has been presented in relation to the motion to dismiss the bill of complaint.

(2) The United States will suffer irreparable injury if the State of Arizona is permitted to continue its forcible prevention of construction pending final determination of this suit. First, the continued use, or threat of use, of troops to prevent action by the Federal Government in lieu of recourse by Arizona to this Court, should not be sanctioned, and whatever the final decision in this case may be, this method of obstruction should be restrained pending the orderly consideration by

this Court of the motion to dismiss and of the further proceedings that may be had in the case. Second, the statements in the Government's affidavits that successful completion of Parker Dam requires immediate resumption of construction, in order to take advantage of the temporary impounding of the flow of the river at Boulder Dam, are not denied by the defendant's response to the order to show cause or by its affidavit. The defendant specifically admits that "enormous advantages" accrue to the United States through construction of Parker Dam, and these advantages will be lost, without benefit to the defendant, if work is further prevented.

ARGUMENT

PART I. ON THE MOTION TO DISMISS

I

THE UNITED STATES HAS CONSTITUTIONAL POWER TO CONSTRUCT PARKER DAM IN AID OF NAVIGATION AND FLOOD CONTROL

In *Arizona* v. *California*, 283 U. S. 423, 457, this Court said, referring to Boulder Dam:

> Since the grant of authority to build the dam and reservoir is valid as an exercise of the constitutional power to improve navigation, we have no occasion to decide whether the authority to construct the dam and reservoir might not also have been constitutionally conferred for the specified purpose of irrigating public lands of the United States.

> Compare *United States* v. *Rio Grande Dam & Irrig. Co.*, 174 U. S. 690, 703; *United States* v. *Alford*, 274 U. S. 264. Or for the specified purpose of regulating the flow and preventing floods in this interstate river. Or as a means of conserving and apportioning its waters among the states equitably entitled thereto. Or for the purpose of performing international obligations. Compare *Missouri* v. *Holland*, 252 U. S. 416.

The present controversy presents certain of those issues mentioned but not decided in that case, as well as the issue of improvement of navigation common to both cases.

Navigation.—The bill of complaint (p. 5) alleges, and the motion to dismiss necessarily admits, that:

> Parker Dam and Reservoir are so located and designed both as to reservoir capacity and outlet works as to be operated by synchronization with Boulder Dam so that Parker Dam will:
>
> 1. Re-regulate and equate, in aid of navigation and river regulation, the waters discharged at Boulder Dam in response to requirements of flood control and fluctuating power and irrigation demands;
>
> 2. Permit the discharge of water for generation of power at Boulder Dam which otherwise would be required to be retained in storage for river regulation, improvement of navigation, flood control, irrigation, and domestic uses;

3. Permit the conservation for irrigation and domestic uses and satisfaction of present perfected rights of waters required to be discharged at Boulder Dam for improvement of navigation, river and flood control, and power generation.

These allegations being conceded, it is immaterial whether Arizona owns the bed of the river, as the defendant's brief contends (p. 11). Such title as the State may have is a "qualified title", subject to the "servitude in respect to navigation" created in the Federal Government by the Constitution. *Arizona* v. *California,* 283 U. S. 423; *New Jersey* v. *Sargent,* 269 U. S. 328, 337, 340; *United States* v. *Chandler-Dunbar Co.,* 229 U. S. 63, 72; *Scranton* v. *Wheeler,* 179 U. S. 141, 163; *Gibson* v. *United States,* 166 U. S. 269, 272. The Federal authority is not impaired by "the fact that purposes other than naviation will also be served." *Arizona* v. *California,* 283 U. S. 423, 456. The regulation of a river so as to obtain a more nearly constant flow is certainly a means "not unrelated to the control of navigation"; *United States* v. *Chandler-Dunbar Co., supra.* Boulder Dam, located 150 miles above Parker Dam, is a structure erected for improvement of navigation and other purposes, those other purposes including the generation of power and the storage and release of water for irrigation and flood-control requirements. *Arizona* v. *California, supra.* Manifestly the reregulation of water discharged at Boulder Dam in response to flood con-

trol, irrigation, and power requirements, and thus discharged in fluctuating quantities, is in aid of navigation. The bill alleges that Parker Dam will provide a reservoir capacity of 717,000 acre-feet.

Arizona argued in *Arizona* v. *California*, 283 U. S. 423, that Boulder Dam was an obstacle, rather than an aid, to navigation. That argument is repeated here. Since the bill alleges, and the motion to dismiss admits, that the dam will aid navigation by reregulating the flow of the river below it, it seems unnecessary that the bill should allege that locks or other means of passage will be installed at Parker Dam for the further assistance of navigation when traffic warrants the expenditure. The contract between the United States and the Metropolitan Water District, pursuant to which the dam is being constructed, specifically makes provision for financing the costs of " such facilities for navigation as the Secretary may find necessary " (Article 10). This contract appears in the Appendix. No provision for locks has been made at Boulder Dam, and the Boulder Canyon Project Act (c. 42, 45 Stat. 1057) does not provide for locks at Laguna Dam or any other dam referred to in that statute.

Flood Control.—The bill alleges that Parker Dam will protect Indian and public lands from damage by the floods of the Colorado River and the Bill Williams River. The flow of the latter river, which enters the Colorado immediately above the dam site, has varied between 9 cubic feet per

second and 50,000 cubic feet per second within a period as short as two weeks. These floods are of short duration, but of heavy volume, constituting a constant menace to the Colorado River Indian Reservation and public lands of the United States in Arizona and California, as well as to the navigation of the Colorado River below the site of Parker Dam. For data on the destructive character of a 50,000-second-foot flood at these points, see United States Geological Survey Water Supply Paper 734, p. 88, and Senate Document 142, 67th Cong., 2d Session, p. 56. The United States has heretofore expended $2,462,000 for flood control of the Colorado River below the site of Parker Dam, and the Act of Congress of January 21, 1927 (c. 47, 44 Stat. 1010, 1021), authorized annual appropriations of $100,000 for defraying the cost of Colorado River front work. The Appropriation Acts are cited in the Appendix.

This Court has not directly passed upon the power of the Federal Government to construct works for flood control, independent of navigation improvements. See, however, references to the question in *Arizona* v. *California*, 283 U. S. 423, 458, particularly footnote No. 9. Where the land to be protected by flood control is the property of the United States, the Federal Government undoubtedly has power to regulate the flow of the stream. We suggest that the qualified interest of the State in the bed of a navigable stream is subject

to a servitude in respect to Federal flood-control, comparable to the "servitude in respect to navigation", to which flood control is related. Compare *Gilman* v. *Philadelphia*, 3 Wall. 713, 725; *Philadelphia Co.* v. *Stimson*, 223 U. S. 605; *Gibson* v. *United States*, 166 U. S. 269; *New Jersey* v. *Sargent*, *supra*; *Cubbins* v. *Mississippi River Commission*, 241 U. S. 351. The power of the United States to deal with the bed of a navigable stream without the consent of the State is not limited to purposes of navigation and commerce, provided that the purpose be Federal. Such a restriction was urged and specifically denied in *United States* v. *Winans*, 198 U. S. 371, 382. And, if protection of Federal property is the purpose of the work, it is not fatal to the exercise of the power that the act of protection must be done on lands in which the State or private parties have an interest. *United States* v. *Alford*, 274 U. S. 264; *Camfield* v. *United States*, 167 U. S. 518.

Consent of the State to Navigation and Flood Control Improvements.—If the United States has the constitutional power to erect Parker Dam for the purposes alleged in the bill of complaint, the exercise of that power is not subject to control by the State, *Arizona* v. *California*, 283 U. S. 423, 451. The cases cited by Arizona (Defendant's brief, p. 13 *et seq.*), in support of the contention that the concurrent consent of Congress and of the State is required for erection of structures in a navigable

stream are all cases involving construction by private parties, not by the United States. The defendant's references to the Act of March 3, 1899 (30 Stat. 1151) and its amendments are likewise not in point; this statute relates to construction by private parties.

II

THE UNITED STATES HAS CONSTITUTIONAL POWER TO CONSTRUCT PARKER DAM FOR THE RECLAMATION OF THE COLORADO RIVER INDIAN RESERVATION AND PUBLIC LANDS

The bill of complaint alleges (par. 14) that, beginning in 1865, Congress has carried forward an irrigation program for the Reservation at a cost to date of $1,359,000 for the ultimate reclamation of 150,000 acres within the Colorado River Indian Reservation; that this area is irrigable, but that pumping of waters of the Colorado River, or diversion of waters of the River by a dam and canal, is necessary for such reclamation. It alleges that the construction of Parker Dam will enable the reclamation of all lands in the Reservation at a cost less than is feasible by any other method; that Parker Dam will furnish hydroelectric energy for pumping, as well as provide diversion works. It also alleges that several hundred thousand acres of public lands lie along and near the Colorado River below Parker Dam, and that those lands are irrigable in like manner.

The Government may, for an appropriate public purpose, establish an interest in a navigable stream bed prior to the admission of a State, and that interest will survive the admission of the new State. *Shively* v. *Bowlby*, 152 U. S. 1, 47:

> Notwithstanding the *dicta* contained in some of the opinions of this court, already quoted, to the effect that Congress has no power to grant any land below high-water mark of navigable waters in a Territory of the United States, it is evident that this is not strictly true. * * *
>
> By the Constitution, as is now well settled, the United States, having rightfully acquired the Territories, and being the only government which can impose laws upon them, have the entire dominion and sovereignty, national and municipal, Federal and state, over all the Territories, so long as they remain in a territorial condition. * * *
>
> We cannot doubt, therefore, that Congress has the power to make grants of lands below high-water mark of navigable waters in any Territory of the United States, whenever it becomes necessary to do so in order to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the objects for which the United States hold the Territory.

The protection of the interests of an Indian Tribes constitutes an appropriate public purpose. *McGilvra* v. *Ross*, 215 U. S. 70.

Thus the United States may, by the creation of an Indian reservation prior to statehood and by legislation for the protection of the water rights of that reservation, create an interest in the Indians' favor which will not be impaired by later inclusion of these lands within the boundaries of a new State. In *Winters* v. *United States*, 207 U. S. 564, the United States sued successfully to restrain the erection of reservoirs which would have impounded waters of the Milk River flowing down to the Fort Belknap Indian Reservation. The land on which the dams would have been built had originally been in the possession of the Indians, but had been ceded to the United States. After the cession, and before ratification of a second treaty, the new State of Montana, within whose borders all of the land lay, was admitted to the Union. The defendants' reservoirs had been licensed by the State. The Court held (p. 577):

> Another contention of appellants is that if it be conceded that there was a reservation of the waters of Milk River by the agreement of 1888, yet the reservation was repealed by the admission of Montana into the Union, February 22, 1889, c. 180, 25 Stat. 676, "upon an equal footing with the original States." The language of counsel is that "any reservation in the agreement with

> the Indians, expressed or implied, whereby the waters of Milk River were not to be subject of appropriation by the citizens and inhabitants of said State, was repealed by the act of admission." But to establish the repeal counsel rely substantially upon the same argument that they advance against the intention of the agreement to reserve the waters. The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. *The United States* v. *The Rio Grande Ditch & Irrigation Co.*, 174 U. S. 690, 702; *United States* v. *Winans*, 198 U. S. 371. That the Government did reserve them we have decided, and for a use which would be necessarily continued through years. * * *

For cases in the lower courts following the *Winters case*, see *Conrad Inv. Co.* v. *United States*, 161 Fed. 829; *United States* v. *Morrison*, 203 Fed. 364, 365.

The *Winters* case involved a nonnavigable stream. But the Government's power to continue the development and protection of Indian rights in a stream which were established prior to statehood is not curtailed by the admission of a State, even though the use of the bed of a navigable stream is involved. In *United States* v. *Winans*, 198 U. S. 371, the Court, citing *Shively* v. *Bowlby*, *supra*, upheld the right of the Yakima Indians to take fish from the Columbia River at "all usual and

accustomed places." The right was claimed under the provisions of a treaty between the United States and the Indians, made in 1859, prior to the admission of the State of Washington. The right was contested by certain owners of riparian lands under patents from the United States, who held fishing wheel licenses from the State of Washington. The Court, at pages 382–384, stated:

> It is further contended that the rights conferred upon the Indians are subordinate to the powers acquired by the State upon its admission into the Union. In other words, it is contended that the State acquired, by its admission into the Union "upon an equal footing with the original States", the power to grant rights in or to dispose of the shore lands upon navigable streams, and such power is subject only to the paramount authority of Congress with regard to public navigation and commerce. The United States, therefore, it is contended, could neither grant nor retain rights in the shore or to the lands under water.
>
> The elements of this contention and the answer to it are expressed in *Shively* v. *Bowlby*, 152 U. S. 1. It is unnecessary, and it would be difficult, to add anything to the reasoning of that case. The power and rights of the States in and over shore lands were carefully defined, but the power of the United States, while it held the country as a Territory, to create rights which would be binding on the States was also announced, opposing the dicta scattered through the

> cases, which seemed to assert a contrary view. * * *
>
> The extinguishment of the Indian title, opening the land for settlement and preparing the way for future States, were appropriate to the objects for which the United States held the Territory. And surely it was within the competency of the Nation to secure to the Indians such a remnant of the great rights they possessed as "taking fish at all usual and accustomed places." Nor does it restrain the State unreasonably, if at all, in the regulation of the right. *It only fixes in the land such easements as enables the right to be exercised.* (Italics supplied.)

The project for irrigating the Colorado River Indian Reservation had been definitely initiated prior to the statehood of Arizona, beginning in 1865, and continued by the appropriation of many thousands of dollars, as shown by the appropriation acts cited in the Appendix. The diversion of water (and inferentially, the construction of diversion works) was specifically authorized by the Act of April 21, 1904 (c. 1402, 33 Stat. 189, 224), which authorized the Secretary of the Interior to divert the waters of the Colorado River and to reclaim, utilize, and dispose of any land in the Colorado River Indian Reservation which might be made irrigable by works constructed under the Reclamation Act.

As to the Reservation, therefore, the preexisting power to construct reclamation works would

clearly have not been curtailed by admission of Arizona to the Union, whether or not the State consented to the continuance of those powers. But the State did affirmatively consent, in a form which, to quote *United States* v. *Winans,* 198 U. S. 371, 384, "fixes in the land such easements as enables the rights to be exercised." That agreement is discussed under heading III.

As to public lands. The federal authority to construct reclamation works for public lands is to be distinguished from the power to regulate the use of water. *Arizona* v. *California,* 243 U. S. 389. The United States is certainly free of the police regulations of a State in exercising the first function (*United States* v. *Rio Grande Dam & Irrigation Co.,* 174 U. S. 690, 703), which is all that is involved in the controversy in its present stage.

III

IF THE CONSENT OF ARIZONA WERE OTHERWISE NECESSARY FOR THE CONSTRUCTION OF PARKR DAM IN AID OF RECLAMATION OF INDIAN AND PUBLIC LANDS, THAT CONSENT HAS BEEN IRREVOCABLY GIVEN

The Enabling Act, under which Arizona was admitted to the Union (Act of June 20, 1910, c. 310, 36 Stat. 557, 570) contains the following stipulation:

> Seventh. That there be and are reserved to the United States, with full acquiescence of the State, all rights and powers for the

> carrying out of the provisions by the United States of the Act of Congress entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction or irrigation works for the reclamation of arid lands", approved June seventeenth, nineteen hundred and two, and Acts amendatory thereof or supplementary thereto, to the same extent as if said State had remained a territory.

The stipulation was included in the constitution of Arizona (Article XX), and remained there until repealed on June 7, 1927. The attempted repeal was ineffective if the original stipulation was valid, inasmuch as it constituted a part of a compact which in terms was irrevocable, and the United States has not consented to its amendment.

Arizona contends (defendant's brief, p. 22) that the United States can assert no rights under the Enabling Act reservation, which she says is in derogation of her sovereignty and therefore void. To the contrary, it appears that the stipulation was for the protection of the right of use and development of Federal property. If so, on the authority of the cases cited below, it was a valid provision. Arizona's brief itself assumes (p. 21) that in reclaiming public or Indian lands the United States "acts in the capacity of a proprietor of its own lands and as a guardian or trustee of Indian lands."

The Federal Constitution, Article IV, Section 3, Clause 1, provides:

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

As originally reported to the Constitutional Convention, this section contained the following additional language:

> If the admission be consented to, the new State shall be admitted on the same terms as the original ones. But the Legislature may make conditions with the new States concerning the public debt which shall be then subsisting.

The additional clause was stricken out, "upon the view that a wide latitude ought to be given to the Congress, and the denial of any attempt to impede the growth of the western country." *Boyd* v. *Thayer,* 143 U. S. 135, 163.

The leading cases on this clause are *Coyle* v. *Oklahoma,* 221 U. S. 559, and *Stearns* v. *Minnesota,* 179 U. S. 223. The former case held unconstitutional a stipulation in the Oklahoma Enabling Act prohibiting the removal of the State capital from the City of Guthrie for a specified period of years.

Coyle v. *Oklahoma, supra,* classified enabling act stipulations in three groups: It distinguished (p. 568)—

> first, between provisions which are fulfilled by the admission of the State; second, between compacts or affirmative legislation intended to operate *in futuro,* which are within the scope of the conceded powers of Congress over the subject; and third, compacts or affirmative legislation which operates to restrict the powers of such new States in respect of matters which would otherwise be exclusively within the sphere of state power.

Stearns v. *Minnesota, supra,* drew this distinction between void and valid enabling act stipulations (p. 244):

> * * * In an inquiry as to the validity of such a compact this distinction must at the outset be noticed. There may be agreements or compacts attempted to be entered into between two States, or between a State and the nation, in reference to political rights and obligations, and there may be those solely in reference to property belonging to one or the other. That different considerations may underlie the question as to the validity of these two kinds of compacts or agreements is obvious. It has often been said that a State admitted into the Union enters therein in full equality with all the others, and such equality may forbid any agreement or compact limiting or qualifying

> political rights and obligations; whereas, on the other hand, a mere agreement in reference to property involves no question of equality of status, but only of the power of a State to deal with the nation or with any other State in reference to such property. * * *

We believe that the compact contained in the Arizona Enabling Act was an "agreement in reference to property." The property involved was a large area of Indian and public land, worthless unless the Government's right to irrigate this area was preserved. *United States* v. *Winans, supra,* established that an Indian right to the use of the bed of a navigable river, initiated before statehood, constituted a right which the advent of statehood could not impair. The 1904 Statute, authorizing a diversion of water (c. 1402, 33 Stat. 189, 224), if not the appropriation statutes between 1865 and 1910 cited in the Appendix, had specifically initiated an Indian water right which the enabling act stipulations were competent to protect. *Winters* v. *United States,* 207 U. S. 564, has shown that such an Indian right, initiated even without specific legislative protection, survives statehood.

In our view, the Arizona Enabling Act was an "affirmative declaration" by the United States of rights in the stream and stream bed previously initiated on behalf of Federal reclamation projects and of its Indian wards. Compare *United States* v. *Holt State Bank,* 270 U. S. 49, and *Brewer El-*

liott Oil and Gas Co. v. *United States*, 260 U. S. 77. It was an "expression of the intention of Congress to continue the burdens in question in the State." Compare *Ward* v. *Race Horse*, 163 U. S. 504. It "fixes in the land such easements as enables the right to be exercised." *United States* v. *Winans*, 198 U. S. 371, 382.

The enabling act compact would have been valid whether the lands intended to be protected were riparian or not. But the bill alleges that the United States is owner of large riparian areas below Parker Dam, and at the dam site and the reservoir site, and the enabling act clauses may derive additional support from that fact.

A State may validly recognize an interest in the bed of a navigable stream in favor of a riparian landowner. *Shively* v. *Bowlby*, 152 U. S. 1. "Thus, if the State chooses to resign to the riparian proprietor sovereign rights over navigable rivers which it acquired on assuming statehood, it is not for others to raise objections." *Fox River Paper Co.* v. *Railroad Comm.*, 274 U. S. 651, 655. See also *Barney* v. *Keokuk*, 94 U. S. 324; *Mobile Transportation Co.* v. *Mobile*, 187 U. S. 479.

Or a State may validly agree to recognize the interest of another State, either proprietary or sovereign, or both; *Central R. R. Co.* v. *Jersey City*, 209 U. S. 473 (70 N. J. 81). Compare *People* v. *Central R. R. of New Jersey*, 42 N. Y. 283; *Ferguson* v. *Ross*, 126 N. Y. 459; *Massachusetts* v. *New*

York, 271 U. S. 65; *Alsos* v. *Kendall*, 111 Ore. 359; *State* v. *Cunningham*, 59 So. 76, 79.

And a State may validly yield such an interest to the United States itself. In *Donnelly* v. *United States*, 228 U. S. 243, the defendant had been indicted by the United States for murder committed upon the stream bed adjoining a riparian Indian reservation. While the Court held that the river was not navigable and that the Federal title to the reservation embraced the bed of the stream, it further held that if the stream were navigable (as the local law of California had held it to be), that the law of California conferred upon the riparian owner the title to the stream bed to the thread of the river, and that such title would have been an adequate basis for Federal jurisdiction. The Court said (p. 262):

> Thus the State of California, if she sees fit, may confer upon the riparian owners the title to the bed of any navigable stream within her borders.

And see the *dicta* in *Brewer Elliott Oil and Gas Co.* v. *United States, supra*, as to the recognition by a State of Indian riparian rights to a streambed.

In *United States* v. *Rio Grande Irrigation Co., supra*, p. 703, this Court said:

> * * * in the absence of specific authority from Congress a State cannot by its legislation destroy the right of the United States, as the owner of lands bordering on a

> stream, to the continued flow of its water; so far at least as may be necessary for the beneficial uses of the government property.

An agreement specifically preserving such a right appears valid.

IV

THE SECRETARY OF THE INTERIOR HAS ADEQUATE STATUTORY AUTHORITY FOR THE CONSTRUCTION OF PARKER DAM, AND THE CONTRACT OF FEBRUARY 10, 1933, WITH THE METROPOLITAN WATER DISTRICT IS A VALID EXERCISE OF THAT AUTHORITY

The defendant's brief contends that both the Secretary of the Interior and the Federal Emergency Administrator of Public Works lack statutory authority to construct Parker Dam.

The Authority of the Secretary of the Interior to Construct the Dam

Section 25 of the Act of April 21, 1904 (c. 1402, 33 Stat. 189, 224), which has been cited on a previous page, provides in substance:

> * * * that in carrying out any irrigation enterprise which may be undertaken under the provisions of the reclamation act * * * and which may make possible and provide for, in connection with the reclamation of other lands, the reclamation of all or any portion of the irrigable lands on the Yuma and Colorado River Indian reservations in California and Arizona, the Secretary of the Interior is hereby authorized to divert the waters of the Colorado River and to reclaim, utilize and dispose of any lands

> in said reservations which may be irrigable by such works in like manner as though the same were a part of the public domain. * * *.

Proceeding under this authority the Secretary, in 1905, constructed Laguna Dam (near Yuma) for the benefit, in part, of the Yuma Reservation (which includes lands at the eastern end of Laguna Dam) but at the cost of the Yuma Project.

The statutory authority for the erection of works in a navigable river by an officer of the United States need not be specific, and is not invalid because it leaves to his discretion how and where the works shall be built. Cf. *South Carolina* v. *Georgia*, 93 U. S. 4, 13. In the Boulder Canyon project Act the *site* of the dam authorized to be built was not fixed by the Act, but the determination of that question was left to the discretion of the Secretary of the Interior. The Act provided that the dam should be built at Black Canyon or at Boulder Canyon. The Secretary decided upon the site at Black Canyon and it is there that the Boulder Dam is built.

If the use of Parker Dam site, and the generation of power there for pumping water to the Colorado River Indian Reservation is, in the Secretary's opinion, the most feasible way to carry out the "diversion of water" authorized by the 1904 statute, it is immaterial that the site itself is not within the limits of the reservation. Cf. *United States* v. *Alford, supra.* In the *Winans Case,*

supra, as here, the disputed location was outside the limits of the reservation.

The Secretary's authority to finance construction by means of the contract of February 10, 1933, with the Metropolitan Water District

The bill recites that on February 10, 1933 the Secretary entered into a contract with the Metropolitan Water District of Southern California whereby the District agreed to prepay the cost of Parker Dam in return for certain benefits, including use of one-half of the power privilege; the United States, nevertheless, to own and control the structure and, without contribution by the Government to the cost of the dam, to utilize the reservoir capacity for river regulation and improvement of navigation, flood control and irrigation, diversion of water, reclamation of Colorado River Indian Reservation and public lands, and to utilize one-half of the power privilege for reclamation of those areas.

Arizona's brief contends (p. 26 *et seq.*) that the Secretary was without authority to make that contract, and that in carrying it out the Interior Department is building Parker Dam for the Metropolitan Water District.

The Act of March 4, 1921 (41 Stat. 1404) provides:

> All moneys hereafter received from any state, municipality, corporation, association, firm, district, or individual for investigations, surveys, construction work, or any

> other development incident thereto involving operations similar to those provided for by the reclamation law shall be covered into the reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said sums had been specifically appropriated for said purposes.

Section 2 of the Act of February 21, 1911 (36 Stat. 926) authorizes the Secretary, upon such terms as may be agreed upon, to cooperate with irrigation districts, water users' associations, corporations, entrymen, or water users for the construction or use of such reservoirs, canals, or ditches as may be advantageously used by the Government and irrigation districts, etc., for impounding, delivering, and carrying water for irrigation purposes.

The brief of the defendant admits that "enormous advantages accrue to the United States" under its contract with the Metropolitan Water District (pp. 26, 27), including a power privilege which the brief estimates to be worth from $12,000,000 to $17,000,000 (p. 28). It argues that the District would not have yielded such a valuable right unless it anticipated "very valuable considerations which are not expressed in the contract." If this argument is relevant, it demonstrates two things: First, that the Secretary made a provident contract, whereby, without cost to the taxpayers of the United States, the objective of the Act of April

21, 1904 (c. 1402, 33 Stat. 189, 224) to provide water for the Indians, as well as the objectives of navigation improvement and flood control, could be accomplished; second, that since the District obtained, in addition to other benefits, a power privilege exactly equal to the Government's, and thus worth, on Arizona's statement, from $12,000,000 to $17,000,000, the District received full value for its $13,000,000 payment. Such an arrangement appears well within the authority of the Act of March 4, 1921 (c. 161, 41 Stat. 1367, 1404) and February 21, 1911 (36 Stat. 926). That authority has been frequently exercised in the construction of other projects, as shown by the annual reports of the Secretary of the Interior cited in the Appendix. The Court may take judicial notice of those reports. *Arizona* v. *California,* 283 U. S. 423, 457, Note 8; *Tempel* v. *United States,* 248 U. S. 121.

It is immaterial whether the District could or could not have built the dam without Arizona's consent.

The Federal title, control, and use of Parker Dam are not lessened by the fact that the District is advancing its cost in payment for a limited right to its benefits. The dam is designed by the Bureau of Reclamation engineers, the specifications are written by them, bids are taken by the Government, the construction contract is made by the United States, and the contractor and materialmen are paid by Treasury vouchers. The difference be-

tween this project and those like it—such as American Falls and Jackson Lake, on the one hand, and projects such as the All American Canal, on the other—is in one respect only: in the first, the Government is placed in funds in advance, and in the second, it must recoup its expenditures after construction. In both cases the Government is made whole by a funding contract with an entity which will benefit by the expenditure. Generally the whole benefit goes to that entity—that is, all of the water impounded, and all of the proceeds of power. See the "Fact Finders' Act" (Act of Dec. 5, 1924, 43 Stat. 701, 703), subsection "J", providing for credit of "total accumulated net profits" to the repayment contract on transfer of operation and maintenance to the water users. Here the Government retains half the power privilege, and runs no risk on its investment. The authority of the United States to exercise eminent domain in aid of a "contributed funds" project (American Falls, Idaho) was sustained in *Brown* v. *United States,* 263 U. S. 78.

The claim of Arizona that, notwithstanding the indicia of Federal interest in the Parker Dam Project, the United States is in fact acting on behalf of the Metropolitan Water District, and as its agent, is similar to the objection which has been raised and answered in a number of eminent domain cases, in which the power of eminent domain was resisted on the ground that while nominally it

was exercised in behalf of a qualified entity, as, for instance, a common carrier, that the real beneficiary was unqualified as, for instance, a particular shipper. Cf. *Hairston* v. *Danville & W. Ry.*, 208 U. S. 598, 607. A case resembling the Parker Dam matter is *Wisconsin* v. *Duluth*, 96 U. S. 379, an original action in which the State of Wisconsin sued to enjoin the City of Duluth, Minnesota, from cutting a new outlet for the St. Louis River, a navigable stream emptying into Lake Superior in Wisconsin. It was claimed that the new works injuriously affected Wisconsin's sovereign interests. The city defended on the grounds, among others, that although this canal had been begun by it, the United States had taken it over and was in fact doing the work under Federal appropriations of funds. The Court sustained the defense, saying (p. 386):

> We do not feel called upon to make an argument to prove that these statutes of the Congress of the United States, and these acts of the Executive Department in carrying these statutes into effect, constitute an adoption of the canal and harbor improvement started by the City of Duluth, and a taking exclusive charge and control of it. That they amount to the declaration of the Federal government, that we here interpose and assert our power. We take upon ourselves the burden of this improvement, which properly belongs to us, and that hereafter this work for the public good is in our hands and subject to our control.

See also *South Carolina* v. *Georgia,* 93 U. S. 4, 13.

If the Government has authority to build the dam, that authority is not lessened by the incidental use of the reservoir thereby created for generation of power. Arizona has no interest in the Government's disposition of the power. *United States* v. *Chandler-Dunbar Co.,* 209 U. S. 447, 229 U. S. 53; *Arizona* v. *California,* 283 U. S. 423.

The defendant has referred to certain statutes which it contends limit the Secretary's authority.

The Indian Appropriation Act of April 4, 1910 (36 Stat. 269, 270) (not cited by the defendant), provides that

> hereafter no new project to cost in the aggregate to exceed thirty-five thousand dollars shall be undertaken on any Indian reservation or allotment without specific authority of Congress.

However, the Act of April 21, 1904 (33 Stat. 189, 224), constituted specific authority, and reenactment of it was not required. The Appropriation Act containing the quoted proviso contains also an appropriation of $50,000 toward securing an appropriation of water for the Colorado River Indian Reservation, negativing any abandonment of the 1904 program (36 Stat. at 273).

Section 8 of the Reclamation Act (Act of June 17, 1902, 32 Stat. 388), provides that nothing in that Act shall be construed as interfering with the laws of any State relating to the control, appro-

priation, etc., of water used in irrigation, and that the Secretary of the Interior shall proceed in conformity with such laws in carrying out the Act. But this provision was intended to protect water rights, not to control the erection of works for Federal purposes. *Arizona* v. *California, supra; Utah Power & Light Co.* v. *United States,* 263 U. S. 389, 410. For the history of this language see *Gutierres* v. *Albuquerque Land Co.,* 188 U. S. 545. The Federal Government's power to permit third parties to use the water stored by Parker Dam for irrigation might be affected by this statute, but not its power to build the dam for Federal purposes, as for example, the protection and reclamation of Indian lands (cf. *Winters* v. *United States, supra*), public lands (*United States* v. *Rio Grande Irrigation Co., supra*) or other Federal objects (*Arizona* v. *California, supra*).

Subsection B of the Act of December 5, 1924, (43 Stat. 701, 702), requires certain findings of feasibility before construction of a new project or division of a project. If this statute applies to projects previously authorized, such as the Colorado River Indian Reservation, the requisite finding is recited in Articles 4 and 5 of the contract between the Secretary and the Metropolitan Water District, printed in the Appendix, and is supported by reports on file in the Bureau of Reclamation made under the direction of Section 11 of the Boulder Canyon Project Act (45 Stat. 1057, 1063).

The defendant's brief cites Section 4 of the Act of June 25, 1910 (c. 407, 36 Stat. 836), which provides in part that:

> hereafter no irrigation project contemplated by said Act of June seventeenth, nineteen hundred and two, shall be begun unless and until the same shall have been recommended by the Secretary of the Interior and approved by the direct order of the President of the United States.

This statute applies to future projects initiated subsequent to its date. The irrigation of the lands of the Colorado River Indian Reservation was initiated March 2, 1867 (14 Stat. 514), when Congress appropriated $50,000 for that specific purpose.

But if this statute is construed as applying to projects previously authorized by Congress, such as the diversion of water for the Colorado River Indian Reservation authorized by the Act of April 21, 1904 (c. 1402, 33 Stat. 189, 224), the requirement appears to have been met by the proceedings had under the National Industrial Recovery Act (48 Stat. 195), outlined *infra*.

As to the authority of the Federal Emergency Administrator of Public Works.—Section 202 of the National Industrial Recovery Act (48 Stat. 195) authorizes the President, through an Administrator, to "prepare a comprehensive program of public works" including

> conservation and development of natural resources, including control, utilization, and purification of waters * * * development of water power, transmission of electrical energy, and construction of river and harbor improvements and flood control * * * Provided, that no river or harbor improvements shall be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief of Engineers of the United States Army * * *.

Section 203 authorizes the President

> through the Administrator or through such other agency as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public-works project included in the program prepared pursuant to Section 202.

Executive Order No. 6252, August 16, 1933, delegated authority to the Federal Emergency Administrator of Public Works in substantially the language of Sec. 203, i. e., "to construct, finance, or aid in the construction or financing of any public-works project included in the program prepared", etc. The bill alleges that in the exercise of that authority the Administrator included Parker Dam in the comprehensive program. The same executive order (Sec. A 1) authorizes the Administrator "to utilize such Federal officers and employees * * * as he may

find necessary * * *." The Secretary of the Interior, in building Parker Dam, is thus constructing a project the authorization for which is derived from the 1933 Industrial Recovery Act as well as the Act of April 21, 1904, *supra,* and is an officer whom the Administrator is authorized to designate as the construction agency, independently of the authority the Secretary derived from the 1921 "Contributed Funds" statute (Act of Mar. 4, 1921, 41 Stat. 1404) and the Act of February 21, 1911 (36 Stat. 926).

Section 201 of the Recovery Act authorizes the President to perform all functions under Title II thereof through the Administrator. The Administrator was thereby authorized to give the "direct order" referred to in section 4 of the Act of June 25, 1910 (c. 407, 36 Stat. 836), if that order was required here.

The brief of the defendant (p. 35) lays stress on the fact that Parker Dam was not included in the "comprehensive program" until December 28, 1933, ten months after execution of the contract with the Metropolitan Water District. This has no bearing on the authority of the Administrator. He is authorized to construct works for which no financing agreement whatever has been made. He is authorized to utilize other Government agencies, such as the Secretary of the Interior, in so doing. From the bill it appears that construction was not started until after Congress had conferred this

authority. Its scope is not impaired by the fact that for ten months previously a financing agreement with the District, which was not essential to the Administrator's authority, had remained executory.

As to the Chief of Engineers.—Parker Dam, under the allegations of the bill, falls within several of the categories of projects authorized by Section 202 of the National Industrial Recovery Act, *supra;* that is, (1) control, utilization, and purification of waters; (2) development of water power; (3) construction of river and harbor improvements; (4) flood control. As to one of these, the construction of river and harbor improvements, a proviso requires that "no river or harbor improvements shall be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief of Engineers of the United States Army." Both of these alternatives have been complied with: the Act of April 21, 1904, *supra,* constitutes an "adoption by the Congress" of a program for diverting water for the Colorado River Indian Reservation, and the bill alleges that the Project has been recommended by the Chief of Engineers. His recommendation appears in the Appendix.

The defendant's brief (p. 17) apparently confuses the functions of the Chief of Engineers under the Act of March 3, 1899 (30 Stat. 1151), and under the National Industrial Recovery Act, *supra.* The

former prohibits the erection of structures in navigable waters without the approval of the Chief of Engineers and the Secretary of War. It applies only to private parties, not to the United States, and is consequently not involved in this case. Under the Recovery Act the "recommendation" of the Chief of Engineers is not the mere negative finding required under the 1899 Act; it is a new and affirmative basis for the inclusion of a project in a Federal construction program, having the same effect under the recognition given to it by that statute as the designation of that particular project by an Act of Congress. The cases cited by the defendant as to the limited effect of the "approval" of a project by the Chief of Engineers under the 1899 statute are not in point; he is proceeding here under a much broader delegation of power, and with regard to a Federal, not a private, project.

The defendant's brief states that the Chief of Engineers' action was taken shortly before this suit was filed, and in contemplation of it. While the recommendation of the Chief of Engineers is not required to bring this project within the comprehensive program of Public Works as a project for "control, utilization and purification of water", it is recognized that the Court, in considering the dam's relation to reclamation and flood control, must necessarily consider its effect on navigation, and to that end the procedure necessary to bring that phase of the matter before the Court has been complied with.

PART II. ON THE APPLICATION FOR A TEMPORARY RESTRAINING ORDER

I

THE BILL OF COMPLAINT STATES A CAUSE OF ACTION ENTITLING THE UNITED STATES TO A PERMANENT INJUNCTION

The argument upon this point has been presented in relation to the motion to dismiss the bill of complaint.

II

THE UNITED STATES WILL SUFFER IRREPARABLE INJURY IF THE STATE OF ARIZONA IS PERMITTED TO CONTINUE ITS FORCIBLE PREVENTION OF CONSTRUCTION PENDING FINAL DETERMINATION OF THIS SUIT

First. The use of militia by a State to prevent procedure by a Federal agency, in lieu of resort by the State to the process of the Court, should not be sanctioned. Whatever the final outcome of this case may be, this method of obstruction should be restrained pending the orderly consideration by this Court of the defendant's motion to dismiss the bill of complaint and of the further proceedings that may be had in this case. The defendant's brief (p. 9) itself states;

> Likewise, it might well be said that Arizona has at all times had available its remedy in the ordinary and orderly course of judicial proceedings and it was not necessary for it to forcibly stop construction, whatever it might have thought of the wisdom of such a course or of its rights in the premises.

Second.—The showing of irreparable injury made by the Government's bill of complaint and the affidavits of the Secretary of the Interior and the Commissioner of Reclamation is not rebutted and is scarcely denied. It is not denied that the construction of Parker Dam requires the excavation of the river bed to a depth of more than 240 feet; that this operation involves great hazard; that it can be successfully carried out only by complete control of the flow of the Colorado River; that for only a limited time the whole flow of the river (except releases for irrigation requirements) will be impounded by Boulder Dam; that Arizona's use of force has already cost two and one-half months (now three months) of this limited construction time; and that the successful completion of the work requires immediate resumption. The defendant's brief (pp. 27, 28) specifically admits that "enormous advantages accrue to the United States" by the construction of Parker Dam, and fails to deny that the whole project must be carried forward without further delay if it is to be successfully completed, and that the favorable conditions now existing because of the filling of Boulder Dam reservoir can never be duplicated.

Instead of traversing these statements, the defendant recounts in detail its controversy with other States and with the United States over the use of Colorado River water, and particularly its opposition to the Metropolitan Water District.

No question of water rights is involved in this application for a restraining order. Construction of Parker Dam does not of itself interfere with such appropriations of water as may lawfully be made in Arizona. A determination of the Government's right to build the dam would not of necessity include a determination of whatever right of diversion may be held by the District or by Arizona, nor would an adjudication upon diversion rights necessarily include a decision on the Federal power to construct the dam. The Supreme Court settled in *Arizona* v. *California*, 283 U. S. 423, that the question of whether the Government has authority to erect a dam has nothing to do with relative rights to appropriate water. The United States may build Parker Dam even if the District may not divert water. Cf. *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 410, 411. Whatever interest Arizona may have in the operation of Parker Dam after its construction may be submitted to the Court later. As this Court said in *Arizona* v. *California*, 283 U. S. 423, 463:

> If by operations at the dam any then perfected right of Arizona, or those claiming under it, should hereafter be interfered with, appropriate remedies will be available.

And (283 U. S. 423, 463):

> There is no occasion for determining now Arizona's rights to interstate or local waters which have not yet been, and which may never be, appropriated.

A further and additional reason why a restraining order should issue forthwith is that the forcible interference by the defendant with the construction of the dam is an interference with the exercise by the Government of a power conferred upon it by the Constitution. Any such interference should be restrained whenever or by whomsoever attempted. If the existence of the power is determined and the fact of the forcible resistance of its exercise is not denied, the power is entitled to immediate protection by this Court. Whatever may be the further course of this case or its ultimate determination, Arizona should be temporarily restrained pending final determination of the case.

CONCLUSION

The defendant's Motion to Dismiss the Bill of Complaint should be denied.

The plaintiff's application for an order restraining all interference by the defendant, the State of Arizona, its officers, agents, and employees, with the construction of Parker Dam pending final determination of this action, should be granted.

Respectfully submitted.

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FEBRUARY 1935.

APPENDIX

UNITED STATES DEPARTMENT
OF THE INTERIOR,
BUREAU OF RECLAMATION.

BOULDER CANYON PROJECT

COOPERATIVE CONTRACT FOR CONSTRUCTION AND OPERATION OF PARKER DAM

1. This contract, made this 10th day of February, 1933, pursuant to the act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the act of Congress approved March 4, 1921 (41 Stat. 1367, 1404), section 25 of the act of Congress approved April 21, 1904 (33 Stat. 189, 224), and the act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and the "Metropolitan Water District Act" of the Legislature of the State of California (Stats. 1927, Chap. 429), as amended, particularly section 5, subdivision (9) thereof, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting for that purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALI-

FORNIA, a public corporation, hereinafter referred to as the District, organized and existing under and by virtue of the laws of the State of California:

WITNESSETH:

EXPLANATORY RECITALS

2. WHEREAS, these parties have heretofore on April 24, 1930, and September 28, 1931, entered into two contracts entitled respectively "Contract for Delivery of Water," and "Supplementary Contract for Delivery of Water," which said contracts provide, among other things, for the delivery by the United States to the District each year from the Boulder Canyon Reservoir of quantities of water at a point in the Colorado River immediately above the District's point of diversion (at or in the vicinity of the proposed Parker Dam hereinafter referred to), and have also entered into two contracts (dated April 26, 1930, and May 31, 1930), for the purchase by the District from the United States of certain quantities of electrical energy to be generated at Hoover Dam, for the pumping of said water into and in an aqueduct to be constructed by the District; and

3. WHEREAS, the said point of delivery and the proposed Parker Dam are approximately ten (10) miles above the boundaries of the Colorado River Indian Reservation, as designated by the act of Congress approved March 3, 1865 (13 Stat. 559), and there are now being irrigated, by pumping, approximately 6000 acres of land within said reservation, and water has been reserved and appropriated, pursuant to said act as amended or supplemented and particularly by the act of April 4,

1910 (36 Stat. 273), for additional lands within said reservation susceptible of irrigation from the Colorado River, the reclamation of which will require diversion from the River by construction of a dam, or by pumping or both, and will require drainage of said lands by pumping, for all of which electrical energy is needed; and

4. WHEREAS, there are also in Arizona additional public and other lands in the vicinity of said reservation and also in the Gila Valley, susceptible of irrigation from the Colorado River, but requiring pumping for such purposes, for which electrical energy will be needed, and the United States has now under way an investigation of possible reclamation of such areas as authorized by section fifteen (15) of the said Boulder Canyon Project Act; and

5. WHEREAS, the reclamation of said Indian and public and other lands will be rendered more feasible by the availability of stored water and electrical energy at the proposed Parker Dam, and the floods of the tributaries of the Colorado River between Hoover Dam and Parker Dam will be controlled, and navigation improved, by said dam; and

6. WHEREAS, the Secretary if authorized by said act of April 21, 1904 (33 Stat. 224), to build the proposed Parker Dam for the reclamation of all or any portion of the irrigable lands on the Yuma and Colorado River Indian Reservations in California and Arizona; and such authority has been reserved in the Arizona Enabling Act (act of June 20, 1910, 36 Stat. 570, 575), and

7. WHEREAS, the District is engaged in a project involving the construction of an aqueduct for the purpose of diverting and conveying water from the Colorado River to the metropolitan area of Southern California for domestic, municipal, and other useful purposes, and as a means of such diversion, desires storage in the main stream of the Colorado River at the site of the proposed Parker Dam, for the purpose, among others, of desilting water, reducing pump lift, and developing incidental electrical energy for pumping water into and in said aqueduct and other uses subordinate to the said aqueduct project, and the District desires to utilize the proposed Parker Dam in common with the United States and is willing to pay to the United States the entire capital cost of construction of said dam, as hereinafter set forth, and is further willing that one-half of the power privilege created by said dam shall be reserved to the United States for the purposes of irrigation and drainage of lands in Arizona within the Colorado River Indian Reservation, as now constituted, and the Gila or Gila-Parker Project without contribution by the United States to the capital cost of the proposed dam, as hereinafter set forth, and is also willing that the dam be utilized by the United States for the storage and diversion of water for the requirements of Indian, public and other lands in Arizona; and

8. WHEREAS, the Secretary is authorized by the act of Congress approved March 4, 1921, to receive moneys from the District as aforesaid and to effect therewith the construction of the proposed works as though said moneys were specifically appropriated for said purposes; and

9. Whereas funds are not otherwise available for the construction by the United States of said dam and the provision of storage and diversion facilities and of appurtenant works for the irrigation and drainage of said Indian, public, and other lands in Arizona and the cooperative construction of the said dam and works, as herein provided, will be mutually advantageous to the parties hereto, and the cost of said dam and appurtenant works will be materially less if constructed during the period of completion of the Hoover Dam now under construction than would otherwise be the case;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

CONSTRUCTION BY THE UNITED STATES

10. The United States will, with funds advanced by the District as hereinafter provided, and for the purposes stated in this contract, construct in the main stream of the Colorado River at a point in the vicinity of Parker, Arizona, shown on the map attached hereto and described herein as Exhibit "A", a dam, referred to herein as the Parker Dam, creating thereby a storage reservoir having a maximum water surface elevation of approximately four hundred fifty (450) feet above sea level (U. S. Geological Survey datum). Upon like conditions the United States will also construct outlet works, pressure tunnels, penstocks, and other appurtenant structures to the extent that such structures may be necessary and/or economically desirable as parts of the original installation, and such facilities for navigation as the Secretary may find

necessary. All buildings intended solely for the use of either party hereto shall be constructed at the sole expense of the party for whom such facilities shall be provided. The dam and appurtenant structures shall be so constructed that subsequent installation of diversion or outlet works shall be possible in the most feasible manner for canal connections with lands within the Colorado River Indian Reservation and with public and other lands in Arizona now or hereafter included in projects constructed under the Reclamation Law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and if either party hereto requires it, so that one-half of the total installed capacity of electrical generating equipment may be located upon the Arizona side of the river and one-half on the California side. Outlet works, pressure tunnels, penstocks, connections for canals, and appurtenant structures not required by the District shall be completed under this contract only to the extent necessary to permit their subsequent completion and use without risk of damage to the remainder of the work.

In carrying out the proposed work hereunder and in acquiring supplies, materials, and equipment therefor, the United States may proceed directly under the method commonly referred to as force account, or may proceed by construction contract. In the event that such contract or contracts shall be let with reference to the construction of said dam, or the acquisition of supplies, materials, or equipment therefor, the letting of such contracts shall be governed by the provisions of Section 3709, United States Revised Statutes.

FUNDS TO BE PROVIDED BY THE DISTRICT

11. The District will advance to the United States, not to exceed the sum of Thirteen Million Dollars ($13,000,000), or so much thereof as may be (a) the cost of preparation of plans and specifications described in Article 13 hereof; (b) the actual cost of the said dam, including acquisition of lands and rights-of-way for reservoir and other incidental purposes, outlet works, pressure tunnels, and penstocks, to be constructed hereunder, and of the District's proportionate share as determined by the Secretary, of such power-plant buildings and generating, transforming, and high-voltage switching equipment as may be installed for the joint use of the United States and the District, and (c) required to meet any overhead and general expense incurred by the United States in carrying out this contract.

Said funds will be furnished to the United States by payment from time to time to the Secretary or such fiscal agent as he may designate in advance of expenditure thereof by the United States. The Secretary will submit estimates of the monthly anticipated expenditures not less than sixty (60) days in advance, and the District will then advance the amount not less than thirty (30) days prior to the month in which such funds shall be estimated to be required. If the United States effects such construction by contract, such contract shall recite that the United States shall not be liable for any loss occasioned by the failure of the District to advance funds as herein provided. The District agrees to hold the United States harmless from all claims whatsoever arising from any such failure. If the

funds provided by the District are at any time insufficient, the United States will stop work (if proceeding under force accounts), when the funds so advanced are exhausted, or give notice to the construction contractor to stop work (if proceeding by construction contract), when the funds so provided are about to be exhausted, and will not resume or give notice to resume work until additional and sufficient funds are provided by the District; and, in any event, the United States shall not be obligated by this agreement beyond the expenditure of the amount actually provided by the District, whether the proposed works are completed or not. The failure of the District to provide funds shall not impose any liability on the District other than to hold the United States harmless from the consequences thereof, but the United States may be relieved, at its option, of any obligation under this contract, if such failure continues for twelve (12) successive months, after submission of estimate therefor, by the Secretary's giving the District written notice of the termination of any further obligation of the United States hereunder.

The cost of the proposed works shall embrace all expense of whatever kind growing out of or resulting from said works, including any overhead and general expense (as conclusively estimated by the Secretary) incurred by the United States in carrying out this contract. Nothing contained in this article is to be construed as obligating the United States to expend or Congress to appropriate money for any share of (a) said power-plant buildings or (b) said generating, transforming, and high-voltage switching equipment intended for the joint use of the parties hereto.

NO OBLIGATION BY THE UNITED STATES TO PAY FOR WORKS CONSTRUCTED

12. The United States shall not be under any obligation to repay to the District, or otherwise contribute toward, the cost of any works built with funds provided by the District.

PREPARATION OF PLANS AND SPECIFICATIONS

13. The designs and specifications for all construction or other work under this contract (including exploratory and preparatory work) shall be prepared by the United States with the cooperation of and at the cost of the District, and shall be approved in writing by the General Manager and Chief Engineer of the District, or such other officer as the Directors thereof may designate, prior to performance thereof or the letting of contracts for such work.

DURATION OF CONTRACT

14. Upon written notice from the District to the Secretary that funds will be available to carry out the work to be constructed hereunder, the United States agrees to submit within thirty (30) days following such notice its first estimate of funds required during the first thirty (30) days of work hereunder and to proceed thereafter with reasonable diligence. It is contemplated that as far as practicable, the proposed works shall be constructed coincidentally with the construction of Hoover Dam and the filling of the reservoir thereby created, and that any contract let by the United States for the erection of Parker Dam shall so provide; but neither the United States nor the District shall incur liability to the other through the noncomple-

tion of said works within said period. This contract shall terminate on December 31, 1945, unless prior thereto the District shall have advanced sufficient funds for all works to be constructed by the United States hereunder, and in the event of such termination, all rights of the District under this contract shall cease, and the uncompleted works, together with the rights to the use thereof, shall vest in the United States.

POWER AND OTHER PRIVILEGES

15. (I) The interests of both parties require, and it is agreed, that the water surface of the reservoir to be created by Parker Dam shall be maintained as nearly as possible at a level of 450 feet above sea level (U. S. Geological Survey datum) at the dam.

II. It is agreed that the United States shall have and may exercise the following rights and such incidental authority as may be necessary to make them effective:

(*a*) The right to control all water passing the dam; provided, however, that the water level stated in Article 15 (I) hereof shall not be arbitrarily reduced but may be temporarily reduced from time to time to a minimum elevation of 440 feet above sea level, and the water level shall not be reduced below said minimum level except in cases of emergency affecting the safety of the said dam and appurtenant works.

(*b*) The right, without contribution to the cost of the dam built under this contract, to one-half the power privilege created thereby for use in the irrigation and drainage of lands in Arizona within the Colorado River Indian Reservation as now

constituted and the Gila or Parker-Gila Project, as determined by the Secretary, and for other purposes incidental to said Colorado River Indian Reservation and Gila or Parker-Gila Project; that is to say, the right to pass through such generating equipment as it may install one-half the total available flow at the dam at any given time, after deductions for diversions being made above the dam for the District's aqueduct and for the irrigation of (1) the Colorado River Indian Reservation, as now constituted, and (2) public and other lands in Arizona now or hereafter included in projects constructed under the Reclamation Law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and the right to so utilize such portion of the balance of the power privilege as aforesaid as may not be used by the District for the time being.

(*c*) The right to connect with such transmission system as the District may construct for the purpose of utilizing any power transmission capacity in excess of the District's requirements, for the transmission of power from Hoover Dam to Parker Dam for general use within the Colorado River Indian Reservation, as now constituted, and Gila or Parker-Gila Project, as determined by the Secretary; provided that such excess capacity shall be subject to reasonable operating conditions fixed by the District, and that the United States shall pay to the District the cost of transmission of such power as may be transmitted by use of such excess capacity hereunder;

(*d*) The right to connect with the Parker Dam and/or the reservoir created thereby by means of a canal (including such outlet and diversion features

at Parker Dam as may be necessary or advisable) with lands within the Colorado River Indian Reservation, as now constituted, and with public and other lands in Arizona or California, now or hereafter included in projects constructed under the Reclamation Law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and the right to thereby divert such quantities of water as may be consistent with the Colorado River Compact and the Boulder Canyon Project Act.

III. It is agreed that the District shall have and may exercise the following rights and such incidental authority as may be necessary to make them effective:

(*a*) The right to one-half of the power privilege created by the proposed Parker Dam for the purpose of developing electrical energy for pumping water into and in the said aqueduct and other uses incidental to said aqueduct project in California; that is to say, the right to pass through such generating equipment as it may install, one-half the total available flow at the dam at any given time, after deductions for diversions being made above the dam for the District's aqueduct and for the irrigation of (1) the Colorado River Indian Reservation, as now constituted, and (2) public and other lands in Arizona, now or hereafter included in projects constructed under the Reclamation Law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and the right to utilize for said purpose such portion of the balance of the power privilege as afore-

said as may not be used by the United States for the time being.

(*b*) The right to divert water from the said Parker Dam and/or the reservoir created thereby, by means of an aqueduct, canal, or other appropriate works (including such outlet and diversion features at Parker Dam as may be necessary or advisable) for domestic, municipal, and other beneficial use within the area of the District, as now or hereafter constituted, in California, and to thereby divert such quantities of water as may be consistent with the Boulder Canyon Project Act, the Colorado River Compact, and the said contracts heretofore entered into between the United States and the District and described and referred to in Article 2 hereof.

INSTALLATION OF MACHINERY

16. Machinery and equipment for generating, transforming, and high-voltage switching of energy for the sole use of the District shall be installed, owned, and operated by the District at its own expense. The District shall not be liable for the cost of generating or other electrical equipment installed for the sole use of the United States.

OPERATION AND MAINTENANCE OF RESERVOIR, DAM, AND OUTLET WORKS

17. The United States will operate and maintain the reservoir, dam, and outlet works, to, but not including, shut-off valves, and reserves the right to direct the control of all water passing the dam for any and all purposes; provided that contracts now

in force between the parties hereto shall not be thereby impaired. So long as the United States shall make no use of the reservoir, the cost of operation and maintenance (which shall include repairs and replacements and a reasonable amount, as determined by the Secretary, for general expenses and overhead, but excluding contingent liabilities and/or damages) shall be paid monthly in advance by the District to the United States within sixty (60) days of submission of estimates therefor. If and when the United States shall use or authorize the use of said reservoir for diversion of water and/or development of power, the annual cost of maintenance and operation of the reservoir and dam (as hereinabove in this paragraph limited and defined) shall be pro-rated upon the basis of the diversions by each party into their respective aqueducts, canals, and power plants, and shall be paid in direct proportion to the uses so made by the District and the United States.

OPERATION AND MAINTENANCE OF POWER PLANT AND POWER PLANT BUILDINGS

18. The District will operate and maintain at its own cost all buildings and equipment used solely by it for the generation of electrical energy, from and including shut-off valves. The United States will operate and maintain at its own cost all buildings and equipment used solely by the United States for the generation of electrical energy, subject to the availability of appropriations therefor by Congress, and said operation and maintenance shall be effected by the United States through such agency as the Secretary shall designate.

TITLE

19. Title to the dam and all other structures erected by the United States, whether utilized by it or by the District, or by both, shall remain in the United States.

UNITED STATES TO BE HELD HARMLESS

20. The District agrees to save the United States, its officers, agents, and employees harmless from all claims whatsoever arising out of the construction and maintenance of said dam, and from all claims whatsoever arising out of such operation thereof as may be necessitated by the requirements of the District. The District agrees to pay all damages resulting from the flooding of lands, and, to the extent that lands within the Chimehuevi Indian Reservation are damaged, payment therefor will be made to the United States for the benefit of said Reservation.

ACCESS TO WORK AND TO BOOKS AND RECORDS

21. Accredited officers of the District shall have the right of ingress to and egress from all work done under this contract, both in progress and after completion, and the right at all reasonable hours to examine and make copies of any books, records, drawings, or specifications thereof; and the United States shall have a like right as to all pertinent books, records, drawings, and specifications of the District. Upon demand and at not less than thirty-day intervals, the United States will furnish to the District detailed statement of all costs and expenditures in connection with and/or chargeable against the proposed Parker Dam Project.

EXISTING CONTRACTS BETWEEN THE UNITED STATES AND THE DISTRICT NOT AFFECTED

22. Existing contracts between the United States and the District shall remain in full force and effect and unaltered by the provisions of this agreement.

TRANSFER OF INTEREST IN CONTRACT

23. No voluntary transfer of this contract, or of the rights hereunder, shall be made without the written approval of the Secretary; and any successor or assign of the rights of the District, whether by voluntary transfer, or otherwise, shall be subject to all the conditions of the Reclamation Law and supplementary legislation, and also subject to all the provisions and conditions of this contract, to the same extent as though such successor or assign were the original contractor hereunder.

RULES AND REGULATIONS

24. This contract is subject to such rules and regulations, conforming to the Reclamation Law and supplementary legislation and other statutes cited in this contract, as the Secretary may from time to time promulgate; *Provided,* however, that no right of the District hereunder shall be impaired or obligation of the District hereunder shall be extended thereby; and *Provided further,* that opportunity for hearing shall be afforded the District by the Secretary prior to promulgation or modification of any such rules and regulations.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

25. This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to the Act of Congress approved August 19, 1921 (42 Stat. 171), entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which Compact was approved in Section 13 (a) of the Boulder Canyon Project Act.

DISPUTES AND DISAGREEMENTS

26. Whenever a controversy arises out of this contract, and if the disputants then agree to submit the matter to arbitration, the District shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within five (5) days after their first meeting, such arbitrators, not so elected, shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

MEMBER OF CONGRESS CLAUSE

27. No Member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By RAY LYMAN WILBUR,
Secretary of the Interior.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
[SEAL] By W. P. WHITSETT,
Chairman of the Board of Directors.

Attest:
NORTHCUTT ELY.

Approved as to Form:
By JAMES H. HOWARD,
General Counsel.

Attest:
A. L. GRAM,
Secretary of the Board of Directors.

Colorado River Indian Reservation, Arizona and California, Acts Appropriating Funds Therefor

Date of Act	Statute Reference	Amount
Mar. 2, 1867	(14 Stat. 514)	$30,000
Jul. 27, 1868	(15 Stat. 222)	50,000
May 29, 1872	(17 Stat. 188)	20,000
Mar. 3, 1911	(36 Stat. 1063)	18,000
Aug. 24, 1912	(37 Stat. 523)	35,000
Jun. 30, 1913	(38 Stat. 85)	25,000
Aug. 14, 1914	(38 Stat. 587)	15,000
May 18, 1916	(39 Stat. 129)	15,000
Mar. 2, 1917	(39 Stat. 974)	15,000
May 25, 1918	(40 Stat. 568)	70,000
Jun. 30, 1919	(41 Stat. 10)	188,000
Feb. 14, 1920	(41 Stat. 415)	86,000
Mar. 3, 1921	(41 Stat. 1232)	86,000
May 24, 1922	(42 Stat. 566)	65,000
Jan. 24, 1923	(42 Stat. 1187)	65,000
Jun. 5, 1924	(43 Stat. 401)	55,000
Mar. 3, 1925	(43 Stat. 1152)	20,000
May 10, 1926	(44 Stat. 463)	15,000
Jan. 12, 1927	(44 Stat. 944)	10,000
Mar. 7, 1928	(45 Stat. 212)	5,000
Mar. 4, 1929	(45 Stat. 1573)	18,000
May 14, 1930	(46 Stat. 290)	25,000
Feb. 14, 1931	(46 Stat. 1126)	8,000
Feb. 2, 1932	(47 Stat. 21)	7,500
Apr. 22, 1932	(47 Stat. 100)	20,000
Feb. 17, 1933	(47 Stat. 829)	12,010
Mar. 2, 1934	(48 Stat. 370)	10,200
Total		$1,073,710

Recommendation of Parker Dam and Appurtenant Works Under National Industrial Recovery Act

Whereas The Secretary of the Interior and the Federal Emergency Administrator of Public Works have made provision for the construction of a dam and appurtenant works in the main stream of the Colorado River, to be known as Parker Dam and to be located about one-half mile below the confluence of the Bill Williams River and the Colorado River, for the following purposes, among others:

1. Reregulation of waters discharged at Boulder Dam in power operations and in response to irrigation demands, in order, by such reregulation, to equate the flow of the Colorado River in aid of navigation and flood control, and to conserve said waters for other beneficial uses;

2. Control of floods of the Bill Williams River (the flow of which ranges from a minimum of 9 cubic feet per second to a maximum of more than 50,000 cubic feet per second) in aid of navigation and protection of federal property from damage by floods;

3. Control of scouring action of the clear waters released at Boulder Dam on the bed of the Colorado River, and prevention of injury to navigation by disturbance of normal low water levels thereby;

4. Other purposes in aid of the reclamation and use of property of the United States.

AND WHEREAS, The Secretary of the Interior and the Federal Emergency Administrator of Public Works have submitted for examination and approval plans, specifications, drawings, and maps of location of said structure and certain appurtenant works; copies of which are hereto attached;

NOW THEREFORE, Pursuant to the authority conferred by Section 202 of Title II of the National Industrial Recovery Act, this is to certify that the said project, constituting Parker Dam, reservoir and appurtenant works is duly recommended by the Chief of Engineers of the United States Army and the inclusion thereof in the comprehensive program of Public Works referred to in said Title is approved; and said recommendation is approved by the Secretary of War.

WITNESS my hand this 4th day of January 1935.

E. M. MARKHAM,
Major General,
Chief of Engineers.
(illegible initials.)

WITNESS my hand this 5th day of January 1935.

GEO. H. DERN,
Secretary of War.

Appropriation Acts for Flood Control on Colorado River Below Site of Parker Dam

The Act of Congress of March 3, 1925 (43 Stat. 1186), authorizes an appropriation of $650,000 for Colorado River front work to protect the Yuma Federal Reclamation project. An appropriation in accordance with this authority is made in the Act of July 3, 1926 (44 Stat. 841, 857). The Act of Congress of January 21, 1927 (44 Stat. 1010, 1021), amends the Act of 1925, supra, and authorizes annual appropriations of $100,000 or so much thereof as may be necessary, for defraying the cost of Colorado River front work.

The Act of Congress of May 10, 1926 (44 Stat. 485), made $35,000 available for the Colorado River front work and levee system for the protection of the Yuma reclamation project. This provision was carried over in the Act of January 12, 1927 (44 Stat. 961).

The Act of Congress of February 14, 1931 (46 Stat. 1146), makes an appropriation of $100,000 to defray the cost of the Colorado River front work and levee system adjacent to the Yuma Federal irrigation project.

The Act of Congress of March 3, 1915 (38 Stat. 861), appropriates $100,000 for Colorado River front work.

The Act of Congress of January 12, 1927 (44 Stat. 961), appropriates $35,000 for Colorado River front work.

The Act of Congress of March 7, 1928 (45 Stat. 231), appropriates $100,000 for Colorado River front work.

The Act of Congress of May 29, 1928 (45 Stat. 903), appropriates $72,640 for Colorado River front work.

The Act of Congress of March 4, 1929 (45 Stat. 1593), appropriates $100,000 for Colorado River front work.

The Act of Congress of May 14, 1930 (46 Stat. 310), appropriates $100,000 for Colorado River front work.

The Act of Congress of February 14, 1931 (46 Stat. 1146), appropriates $100,000 for Colorado River front work.

The Act of Congress of April 22, 1932 (47 Stat. 118), authorizes expenditures of unexpended balances for Colorado River front work.

The Act of Congress of February 17, 1933 (47 Stat. 845), authorizes an appropriation of $48,000 for Colorado River front work.

The Act of Congress of March 2, 1934 (48 Stat. 362), authorizes the expenditure of the unexpended balance on Colorado River front work.

In 1906 there was a disastrous break in the banks of the Colorado River, and the River was pouring into the Imperial Valley, threatening to make a lake of this area. The Southern Pacific Company closed the break. In the Act of Congress of May 26, 1924 (43 Stat. 171), the Company was authorized to sue the United States in the Court of Claims for the work so done. A judgment of $1,012,665.57 was recovered (68 Court of Claims 223).

The Act of Congress of July 13, 1892 (37 Stat. 108), appropriates $10,000 for "Improving Colorado River by construction of a levee on the Gila River near its junction with the Colorado River at Yuma, Arizona, so as to confine the waters to the channel of said rivers."

References in Printed Reports of the Secretary of the Interior Relative to the Operations of the Bureau of Reclamation Regarding "Contributed Funds"

The following references are found in the Secretary's printed Annual Reports in regard to contributed funds:

24th An. Rep., 1924–1925, page 127, under "Appendix, Consolidated Financial Data, Construction Account, *Contributed Funds, $1,023,597.64.*"

Under the same heading and on page 105 of the 25th An. Rep., 1925–1926, *"Contributed Funds, $1,024,073.13."*

Under the same heading and on page 35 of the 26th An. Rep., 1926–1927, *"Contributed Funds, $1,174,306.49."*

Under the same heading and on page 31 of the 27th An. Rep., 1927–1928, *"Contributed Funds, $1,248,813.73."*

Under the same heading and on page 37 of the 28th An. Rep., 1928–1929, *"Contributed Funds, $1,320,870.80."*

Under the same heading and on page 53 of the 29th An. Rep. 1929–1930, *"Contributed Funds, $1,428,906.38."*

Under the same heading and on page 60 of the 30th An. Rep. 1930–1931, *"Contributed Funds, $1,457,959.63."*

Under the same heading and on page 77 of the 31st An. Rep. 1931–1932, *"Contributed Funds, $1,614,552.76."*

Under the same heading and on page 37 of the 32nd An. Rep. 1932–1933, *"Contributed Funds, $1,733,552.76."*

Under the same heading and on page 47 of the 33rd An. Rep. 1933–1934, *"Contributed Funds, $1,783,013.08."*

Department of the Interior, Bureau of Reclamation.

Statement of Contributed Funds Act of March 4, 1921

State	Project	Contributed funds
Arizona	Yuma	$101,113.89
California	Orland	1,600.00
Colorado	Grand Valley	210,500.00
Idaho	Boise	3,865.68
Do	King Hill	8,025.66
Do	Minidoka	856,778.09
Do	Minidoka-Gooding	1,000.00
Montana	Huntley	717.64
Do	Sun River	184.47
Wyoming	North Platte	33,782.28
Nevada	Newlands	1,453.05
New Mexico	Carlsbad	7,980.06
Do	Rio Grande	370,925.00
Oregon	Baker	5,000.00
Do	Owyhee	4,354.61
Do	Vale	5,000.00
Do	Umatilla	1,000.00
South Dakota	Belle Fourche	4,960.32
Utah	Salt Lake Basin	44,736.77
Do	Strawberry Valley	4,179.06
Washington	Yakima	63,736.50
Wyoming	Shoshone	1,900.00
Washington	Grand Coulee	80,000.00
Total		1,783,013.08

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION.

AMERICAN FALLS RESERVOIR—IDAHO (COOPERATIVE FINANCING)

(In the account books of the Bureau of Reclamation the amounts contributed by individual contractors for American Falls Reservoir were not carried as contributed funds.)

Total ---------- $3,366,880.11

U. S. GOVERNMENT PRINTING OFFICE: 1919

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SUPREME COURT OF THE UNITED STATES.

No. 18, Original.—October Term, 1934.

The United States of America, Plaintiff,
vs.
The State of Arizona, Defendant.

[April 29, 1935.]

Mr. Justice Butler delivered the opinion of the Court.

September 10, 1934, the United States, acting through Harold L. Ickes, Secretary of the Interior and Federal Emergency Administrator of Public Works, caused to be commenced the construction of the Parker Dam in the main stream of the Colorado River, the thread of which for a distance of about 237 miles is the boundary between Arizona and California. The site is 150 miles below the Boulder Dam, half a mile below the place where the Williams River flows into the Colorado and 10 miles north of the Colorado River Indian Reservation. Its ends rest on public lands of the United States in Arizona and California. Arizona objects to the construction of the dam, asserts that it may not lawfully be built without her consent and threatens the use of military force to stop the work. January 14, 1935, the United States filed its bill in equity perpetually to enjoin interference by the State. On plaintiff's motion this court directed defendant to show cause why a restraining order should not issue pending the final determination of the suit. Arizona filed a return consisting of an affidavit of the governor setting forth the grounds on which the State claims the right to prevent the construction of the dam in the part of the river bed that is easterly of the thread of the stream, a motion to dismiss the bill and a supporting brief. We heard counsel on plaintiff's application for a temporary injunction and defendant's motion to dismiss.

We come first to the question whether the complaint alleges facts sufficient to warrant an injunction against the State. The allegations will be better understood after brief reference to the Colorado River Compact[1] and the Boulder Canyon Project Act, 45 Stat. 1057.

[1]Printed in California Statutes, 1929, c. 1, § 1.

The Compact was made by California, Colorado, Nevada, New Mexico, Utah and Wyoming. Arizona was not a party. It was made to provide an equitable apportionment of the waters of the Colorado River system among the interested States, establish relative importance of different beneficial uses and secure the development of the Colorado River basin, the storage of its waters and protection against floods. After apportionment between defined basins lying above and below Lee Ferry and a declaration that the Colorado has ceased to be navigable for commerce and that the use of its waters for purposes of navigation should be subservient to uses for domestic, agricultural and power purposes, the Compact authorizes the waters of the system to be impounded and used for the generation of power and declares that use subservient to uses for agricultural and domestic purposes. It was approved by § 13 (a) of the Boulder Canyon Project Act and, by presidential proclamation, it took effect June 25, 1929. 46 Stat. 3000. The Act authorizes the Secretary of the Interior to construct a dam and incidental works in the Colorado at Boulder Canyon adequate to create a reservoir having a capacity of not less than 20,000,000 acre feet "and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary . . . is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California". § 1.[2] In a suit in this Court against the Secretary of the Interior and the States which were parties, Arizona unsuccessfully sought to have ratification of the Compact decreed to be unconstitutional and to enjoin construction of the Boulder Dam and the doing of anything under color of that Act. *Arizona* v. *California,* 283 U. S. 423.

The bill alleges that February 10, 1933, the United States, acting through the Secretary of the Interior, entered into a contract with the Metropolitan Water District of Southern California. The District agrees to pay to the United States the entire cost of the dam, assumed not to exceed $13,000,000. By the use of this money the United States agrees that, under the Reclamation Act, June 17,

[2]By §§ 12 and 14 of the Boulder Canyon Project Act, the Reclamation Law is defined to mean the Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplemental thereto, including the Boulder Canyon Project Act.

1902, 32 Stat. 388, and supplemental Acts, particularly those of April 21, 1904, 33 Stat. 224, March 4, 1921, 41 Stat. 1404, and December 21, 1928 (The Boulder Canyon Project Act)[3] it will construct the Parker Dam. The District is to have one-half the power privilege and the right to divert specified quantities of water. The United States is to have the right to the rest of the power, to divert water, to transmit power at cost over the District's lines from Boulder to Parker, and, by means of canals, to connect Parker Dam with lands in the Colorado River Indian Reservation in Arizona and with other lands in that State and in California.

Parker Dam will intercept waters discharged at Boulder Dam and the inflow of tributaries of the Colorado below that dam; raise the river level 72 feet and create a reservoir about 20 miles long, having capacity of 717,000 acre feet, and permit generation of approximately 85,000 horsepower of electricity. Operated with Boulder Dam, it will "reregulate and equate, in aid of navigation and river regulation," the waters discharged at Boulder Dam for flood control, power generation and irrigation; allow, for generation of power, the discharge at Boulder Dam of water which otherwise would have to be retained there in storage, and also conserve the waters there discharged.

The bill also alleges that heavy flash floods of the Williams River are a menace to the Colorado River Indian Reservation, to United States public lands and to navigation below Parker. The dam is designed to promote reclamation of the reservation lands and of public lands of the United States. The power privilege reserved by the United States is for the purpose of pumping water for irrigation of these lands.

To disclose grounds on which the United States claims the right to construct the dam, the bill sets out that at various times Congress has made appropriations amounting in all to more than $1,359,000 for construction of irrigation and diversion works for

[3]Other amendatory and supppplemental acts are: Acts of February 25, 1905, 33 Stat. 814; March 3, 1905, 33 Stat. 1032; April 16, 1906, 34 Stat. 116; June 12, 1906, 34 Stat. 259; June 27, 1906, 34 Stat. 519; June 11, 1910, 36 Stat. 465; June 25, 1910, 36 Stat. 835; February 21, 1911, 36 Stat. 925; February 24, 1911, 36 Stat. 930; August 13, 1914, 38 Stat. 686; June 12, 1917, 40 Stat. 149; October 2, 1917, § 10, 40 Stat. 300; February 25, 1920, § 35, 41 Stat. 450; May 20, 1920, 41 Stat. 605; June 10, 1920, § 17, 41 Stat. 1072; December 5, 1924, § 4, 43 Stat. 701, June 6, 1930, 46 Stat. 522.

the reservation;[4] that the above mentioned Act of April 21, 1904, authorized the Secretary of the Interior to divert the waters of the Colorado and to reclaim, utilize and dispose of land in the reservation which might be made irrigable by works constructed under the Reclamation Act, and that the Boulder Canyon Project Act appropriated moneys for surveys of the Parker-Gila reclamation project which, it is said, embraces the Indian reservation and certain public lands of the United States. And it is asserted that the Parker Dam project has been included by the Administrator in the comprehensive program of public works authorized by § 202, National Industrial Recovery Act, 48 Stat. 201; that, pursuant to that Act, the Chief of Engineers of the United States Army has recommended the construction and his recommendation has received the approval of the Secretary of War.

1. The bill alleges that the stretch of the Colorado between Arizona and California is navigable, and the motion to dismiss is dealt with on that basis. Arizona owns the part of the river bed that is east of the thread of the stream. *New Jersey* v. *Delaware*, 291 U. S. 361, 379 *et seq.* Her jurisdiction in respect of the appropriation, use and distribution of an equitable share of the waters flowing therein is unaffected by the Compact or federal reclamation law. But the title of the State is held subject to the power granted to Congress by the commerce clause, *United States* v. *Holt Bank*, 270 U. S. 49, 54-55, and under that clause Congress has power to cause to be built a dam across the river in aid of navigation. The Boulder Canyon Project Act is an example of the exertion of that power. *Arizona* v. *California*, *supra*, 451, 455-457. But no Act of Congress specifically authorizes the construction of the Parker Dam. Subject to an exception with which

[4] Act of March 2, 1867, 14 Stat. 514, appropriated $50,000 "For expense of collecting and locating the Colorado River Indians in Arizona, on a reservation set apart for them by" § 1, Act of March 3, 1865, 13 Stat. 559, "including the expense of constructing a canal for irrigating said reservation". For completing the canal, $50,000 was appropriated by the Act of July 27, 1868, 15 Stat. 222, and $20,000 by the Act of May 29, 1872, 17 Stat. 188. Section 3, Act of April 4, 1910, 36 Stat. 273, appropriated $50,000 "For the construction of a pumping plant to be used for irrigation purposes on the Colorado River Reservation, together with the necessary canals and laterals, for the utilization of water in connection therewith, for the purpose of securing an appropriation of water for the irrigation of approximately one hundred and fifty thousand acres of land . . . to be reimbursed from the sale of the surplus lands of the reservation." To complete and maintain the work commenced by the 1910 Act, Congress has since appropriated $888,710.

we have no concern, § 9 of the Act of March 3, 1899, forbids the construction of any bridge, dam, dike or causeway over or in any port, roadstead, haven, harbor, canal, navigable river or other navigable water of the United States until the consent of Congress shall have been obtained and until the plans shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War. 33 U. S. C., § 401. And § 12 makes violations of § 9 punishable by fine or imprisonment or both and provides for the removal of unauthorized structures. 33 U. S. C., § 406. These provisions unmistakably disclose definite intention on the part of Congress effectively to safeguard rivers and other navigable waters against the unauthorized erection therein of dams or other structures for any purpose whatsoever. The plaintiff maintains that the restrictions so imposed apply only to work undertaken by private parties. But no such intention is expressed, and we are of opinion that none is implied. The measures adopted for the enforcement of the prescribed rule are in general terms and purport to be applicable to all. No valid reason has been or can be suggested why they should apply to private persons and not to federal and state officers. There is no presumption that regulatory and disciplinary measures do not extend to such officers. Taken at face value the language indicates the purpose of Congress to govern conduct of its own officers and employees as well as that of others. *Donnelley* v. *United States*, 276 U. S. 505, 516. If still in force, § 9 unquestionably makes "consent of Congress" essential to the valid authorization of the Parker Dam. There has been no express repeal of that section and, as will presently appear, it is not inconsistent with subsequent legislation on which plaintiff relies.

2. Plaintiff, unable to cite any statute specifically authorizing the Secretary to construct the dam, turns to § 25 of the Act of April 21, 1904, 33 Stat. 224. That section is a part of the reclamation laws which are enacted—not under the commerce clause, Art. 1, § 8, cl. 3, but in the exertion of power granted by Art. IV, § 3, cl. 2: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". *United States* v. *Hanson*, 167 Fed. 881, 883. *Kansas* v. *Colorado*, 206 U. S. 46, 88, *et seq.* The part of § 25 relied on follows: "That in carrying out any irri-

gation enterprise which may be undertaken under the provisions of the reclamation Act . . . and which may make possible and provide for, in connection with the reclamation of other lands, the reclamation of all or any portion of the irrigable lands on the Yuma and Colorado River Indian reservations in California and Arizona, *the Secretary of the Interior is hereby authorized to divert the waters of the Colorado River* and to reclaim, utilize, and dispose of any lands in said reservations which may be irrigable by such works in like manner as though the same were a part of the public domain". The immediate question is whether the italicized clause can reasonably be construed as adequate to carry the burden that plaintiff would have us lay upon it. The purpose was not to prescribe or regulate the means to be employed to divert water from the Colorado but to extend the reclamation law to the Indian reservations named. It was merely to empower the Secretary, if the circumstances stated should arise, to reclaim lands in these reservations by use of water to be taken from that river. The authority granted was no more than permission to appropriate them for the purpose specified. No dam is shown to have been necessary. Water is frequently taken from streams for the purposes of irrigation without putting dams across them. Failure specifically to authorize a dam or even approximately to fix location or to require use calculated to aid navigation makes strongly against the plaintiff.

In support of the construction for which it contends, plaintiff asserts that it was under this Act that the Secretary of the Interior built the Laguna Dam across the Colorado. But it does not appear that either riparian State objected or that the validity of his authority has ever been drawn in question. Congress has made appropriations for the benefit of the project of which it is a part[5] and so recognized and approved the building of the dam. *Wisconsin* v. *Duluth*, 96 U. S. 379, 386. There has been cited no other instance of the construction, without the consent of the Congress, of a dam across a navigable interstate river. Indeed, it is not certain that that part of the Colorado was then deemed to be navigable.[6] We find no merit in the contention that § 25 of the Act

[5] See e. g., Acts of July 1, 1916, 39 Stat. 304; June 12, 1917, 40 Stat. 148, and July 1, 1918, 40 Stat. 674, making appropriations for the Yuma Project, Arizona-California, which includes the Laguna Dam. See e. g., Reclamation Service Report 13, p. 73, *et seq.*; Report 15, p. 68, *et seq.*

[6] See Art. IV (a), Colorado River Compact.

of April 21, 1904, is the "consent of Congress" required by § 9 of the Act of March 3, 1899. And plainly without force is the suggestion that by making appropriations for irrigation of lands in Indian reservations Congress authorized this dam.

3. The clause of § 1 of the Boulder Canyon Project Act empowering the Secretary to construct a main canal connecting the Laguna Dam "or other suitable diversion dam" with the Imperial and Coachella Valleys does not authorize the building or in any respect apply to the proposed Parker Dam. The latter is about 70 miles upstream from the Laguna and the canal proposed to be built to bring water to the valleys named.[7] The contract alleged to have been made by the United States and the Metropolitan Water District, a copy of which is attached to plaintiff's brief, shows that the purpose immediately to be served by the Parker Dam is to enable the United States in fulfillment of earlier contracts to deliver waters at that place into the aqueduct of the District. And while that instrument specifies other uses to which the United States may put the waters by means of the dam, transmission by canal to either of these valleys is not mentioned. Indeed, the plaintiff does not, and it could not reasonably, claim that § 1 of the Boulder Canyon Project Act authorizes the construction of this dam. Nor does it make any contention in respect of the allegation of the bill that § 11 of the Act authorizes surveys of the Parker-Gila reclamation project.

4. Parker Dam was not approved by the President as required by § 4 of the Act of June 25, 1910, 43 U. S. C., § 413. That section declares that no irrigation project contemplated by the Reclamation Act "shall be begun unless and until the same shall have been recommended by the Secretary of the Interior and approved by the direct order of the President of the United States." The project in question rightly may be deemed to have been begun on the date, February 10, 1933, of the contract made by the United States and the Water District for the construction of the dam. There is no allegation that any project including the dam was ever recommended, submitted to or in any manner approved by the President. But plaintiff maintains that the approval required in the section has been given through executive action under the Na-

[7] Wilbur and Ely, The Hoover Dam Contracts, United States Department of the Interior, 1933, pp. II, 71, 325.

tional Industrial Recovery Act. It relies on §§ 201 a, 202 and 203 of the Act and Executive Order No. 6252. The first of these authorizes the President to delegate any of his powers under title II of the Act to such agents as he may designate. Section 202 provides that the Administrator under the direction of the President shall prepare a comprehensive program of public works "which shall include . . . construction of river and harbor improvements . . . *Provided,* That no river or harbor improvements shall be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief of Engineers . . . ." Section 203 authorizes the President "through the Administrator . . . to construct . . . any public-works project included in the program prepared pursuant to section 202". The Executive Order delegates authority to the Administrator "to construct . . . any public-works project included in the program." The contract here involved was made more than four months before the passage of that Act. Plaintiff asserts that the project was included in the comprehensive program, that the Administrator commenced construction about September 10, 1934, and that on November 10 following, Arizona interfered forcibly to prevent plaintiff from doing the work. The alleged recommendation by the Chief of Engineers and approval by the Secretary of War were not made until January 5, 1935,[8] nine days before plaintiff filed its bill. These facts do not constitute approval "by direct order of the President" as required by § 4. Plaintiff does not allege or claim that the President has directly authorized the dam or specifically empowered the Administrator to include it in the comprehensive program. We find nothing in the Recovery Act that reasonably may be held to repeal the requirement of that section. It follows that the construction of the dam has not been authorized as required by the Reclamation Law.

5. Plaintiff's contention that the dam is being built under authority of the Recovery Act is without force.

The chronology just given, when taken in connection with the citations in the contract of the Acts relied on, shows the claim to

[8]The complaint does not show the date of the alleged inclusion of the dam in the comprehensive program of public works authorized by § 202 of the Recovery Act. It also fails to give the date of the recommendation of the Chief of Engineers and approval by the Secretary of War. A copy of the certificate attached to the complaint furnishes that date, January 5, 1935.

be an afterthought born of the controversy disclosed by the complaint and about to be here submitted. Section 25 of the Act of April 21, 1904, does not authorize this dam. Plaintiff does not assert that it was otherwise adopted by Congress. It therefore remains only to consider whether the dam was recommended by the Chief of Engineers within the meaning of the proviso of § 202. When the Recovery Act was passed, the phrases "adopted by the Congress" and "recommended by the Chief of Engineers", when used in Acts of Congress relating to river and harbor improvements, had well-understood and definite technical meanings. The statutes, at least in the 40 years next preceding the passage of the Recovery Act, disclose: It has been the general, if not indeed the uniform, practice of Congress specifically to authorize all river and harbor improvements carried out by the United States,[9] and to base its action upon the recommendation of the Chief of Engineers.[10] That officer makes such recommendation only after preliminary examinations followed by surveys.[11] Congress expressly

[9]The Rivers and Harbors Acts prior to that of September 22, 1922, authorized surveys and improvements and made appropriations. A typical provision was: "That the following sums . . . are hereby appropriated . . . to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers, for the construction, completion, repair, and preservation of the public works hereinafter named. . . ." Act of August 8, 1917, 40 Stat. 250. The Act of September 22, 1922, omitted appropriations and adopted specified improvements: "That the following works of improvement are hereby adopted and authorized, to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers in accordance with the plans recommended in the reports hereinafter designated. . . ." 42 Stat. 1038. The same language is used in § 1 of the Acts of March 3, 1925, 43 Stat. 1186; January 21, 1927, 44 Stat. 1010, and July 3, 1930, 46 Stat. 918. See also 79 Cong. Rec., p. 5454.

[10]" . . . The Committee on Rivers and Harbors has pursued an invariable rule of requiring all rivers and harbors projects to have the approval and recommendation of the Corps and Chief of Engineers before we considered them eligible for consideration." Remarks of chairman of that committee in the Committee of the Whole House considering bill for river and harbor improvements, 79 Cong. Rec., p. 5441, see also pp. 5460, 5465, 5466. Cf. § 9, Act of September 22, 1922 (33 U. S. C., § 568): "No project shall be considered by any committee of Congress with a view to its adoption, except with a view to a survey, if five years have elapsed since a report upon a survey of such project has been submitted to Congress pursuant to law".

[11]To secure greater uniformity in the recommendations and reports required of Chief of Engineers (See H. Rep. No. 795, 57th Cong., 1st session, p. 3), Congress created in his office a Board of Engineers for Rivers and Harbors, § 3, Act of June 13, 1902, 32 Stat. 372. Subsequent legislation in respect of this Board, material here, is found in § 3, Act of June 25, 1910, 36 Stat. 668; §§ 3 and 4, Act of March 4, 1913, 37 Stat. 825; § 2, June 5, 1920, 41 Stat.